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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,771	10/01/2003	James J. Burnes	2312	9130

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EXAMINER
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SAFARI, MICHAEL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/677,771	BURNES ET AL	
	Examiner	Art Unit	
	M. Safavi	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 19-34 is/are pending in the application.
- 4a) Of the above claim(s) 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 19-23, and 26-31 is/are rejected.
- 7) ☒ Claim(s) 24, 25, 32 and 33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1 and 19-33 are, drawn to an end cap, classified in class 405, subclass 42.
- II. Claim 34 is, drawn to a chamber for leaching or stormwater use, classified in class 210, subclass 170.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the claimed combination does not require any of an end cap "end flange" or an end cap "base flange" or "an end cap with a dome shape which bulges outwardly from the nominal plane of the end flange". The subcombination has separate utility such as use with a chamber other than that having "corrugated opposing sidewalls which are free of ports for water carrying pipes".

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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Newly submitted claim 34 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: See above requirement for restriction

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 34 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claim 26 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.** The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not appear to have originally disclosed a corrugation behind the transition section as in nominally the same plane as the plane of the end flange.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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**Claims 20, 21, and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 20, it is not clear as to what is being defined by "the shell dome shape has a smoothly curved convex exterior surface". The specification does not appear to define an end cap possessing "a smoothly curved convex exterior surface".

Claim 21, it is not clear as to what is being defined by "the essentially planar facet surface runs upwardly from elevation of the base flange". The specification does not appear to define the facet surface as being run "upwardly from elevation of the base flange". Rather, the specification defines the buttress as extending from the base surface.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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**Claims 1, 19-22, 26-30 are rejected under 35 U.S.C. 102(a) as being anticipated by Maestro '777.** Maestro '777 discloses, Figs. 2 and 3, an end cap for arch shaped leaching chamber comprising an end flange 12 which may connect with a leaching chamber, base flange 49, a shell, (the general body), and at least two buttresses 38/39 facing in different direction relative to an x-axis. The end cap can be seen as possessing a continuous "smoothly" curved convex exterior defining a dome shape or bulge which bulge extends outwardly from a plane of the end flange 12. The buttress has "an essentially planar facet surface" 60 so that a pipe can run therethrough. Or, facet surface is at 18 running upwardly from an elevation of the base. In other words, buttresses run upwardly from the base flange, (particularly if including portions 16/18 on either side). A "transition area" is any portion of the body connecting the shell, (or any portion of the body), to the end flange 12, (such as that portion immediately behind 12 and including a corrugation which corrugation can be seen as in nominally the same plane as the plane of the end flange 12). Curved step or saddle of displaced surface is at 60. Curved sub saddle is formed by corrugation of 39, which would present a two-step buttress or planar surface. Means for receiving a splash plate is any portion of the flange 12. The end cap has corrugations 16/17 running transverse to the x-axis. Portions 38 constitute planar panels.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maestro '777 in view of Gray.**

Gray teaches formation of ports including planar panels, which can be manually cut or torn to form a hole for receiving a pipe, col. 5, lines 8-12. To have provided the Maestro '777 end cap ports, (buttresses), with planar panels which can be manually cut or torn to form a hole for receiving a pipe, thus allowing selective use of any specific port, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Gray.

**Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maestro '777 in view of Nichols et al.**

Nichols et al. teaches formation of end ports 38 facing in an x-direction of the end cap 26/20. To have provided the Maestro '777 end cap with a port, (buttresses), facing in an x-direction of the end cap, thus allowing selective use of any specific port facing any given direction, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Gray.

Claims 24, 25, 32, and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed January 10, 2005 have been fully considered but they are not persuasive. The Maestro element 14 is an end cap. The language of the instantly rejected claims does not serve to distinguish over Maestro '777. Otherwise, Examiner knows of no specific definition in the art that would serve to exclude Maestro's Fig. 2 as an end cap. And, portion 38/39 of Maestro does serve to read upon buttress. Portion 38/39 does extend outwardly from the exterior surface of the Maestro end cap. See Fig. 2, for example, showing portions around 32 or 38 extending from the surface of the Maestro end cap. As for "Maestro does not show an essentially planar facet surface on a buttress within the meaning of applicants' claims", as set forth in the above rejections Maestro serves to read upon the recited limitations presented within the instantly rejected claims. Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim.

As for either of Gray and Nichols, Gray has been utilized to teach formation of ports including planar panels, which can be manually cut or torn to form a hole for receiving a pipe while Nichols has been utilized to teach formation of end ports facing in an x-direction of the end cap. Otherwise, Applicant has not provided sufficient reasoning as to why Maestro cannot be combined with either of Gray and Nichols.



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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (703) 308-2481. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

M. Safavi  
March 25, 2005



**MICHAEL SAFAVI  
PRIMARY EXAMINER  
ART UNIT 354**